

REMARKS

The Applicants respectfully request reconsideration in view of the following remarks and amendments. Claim 1 has been amended. Claim 6 has been cancelled. No claims have been added. Accordingly, claims 1-5 and 7-23 are pending in the Application.

I. Examiner Interview Summary

Applicants acknowledge with appreciation the Examiner's granting of an interview with Applicants' representative Dimitri Kirmis on July 10, 2009 via telephone. During the interview, the Advisory Action mailed June 29, 2009 was discussed. In the Advisory Action the Examiner noted that the inclusion of "a rigid flexible part" to claim 1 raises new issues that would require further consideration and/or search. The Applicants' representative noted that "a rigid flexible part" was erroneously added and instead "a rigid part" should be recited. The Examiner agreed to review a Supplemental Response to Final Office Action prior to the three-month deadline of July 14, 2009 and the Applicants' representative should callback on this date for further discussion of the outstanding Final Office Action. No other agreements were reached during the interview.

II. Claim Objections

Claims 5-23 are objected to under 37 CFR 1.75(c) as being in improper form, because a multiple dependent claim cannot depend from another multiple dependent claim. However, the pending claims do not include any multiple dependent claims. Thus, the Applicants believe the Examiner has objected to these claims in error. If the Examiner maintains this rejection, the Applicants request that the Examiner specifically indicate which claims are believed to be multiple dependent claims. In view of the fact that there are no multiple dependent claims in the pending claims set, the Applicants respectfully request reconsideration and withdrawal of the objection to claims 5-23.

III. Claims Rejected under 35 USC 103(a)

Claims 1-23 are rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,445,602 issued to Grim ("Grim").

To determine obviousness of a claim: (1) factual findings must be made under the factors set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966); and (2) the analysis supporting the rejection under 35 U.S.C. § 103 should be made explicit and there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. See MPEP §§ 2141(II), 2141(III), and 2142; KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1396; see e.g., MPEP § 2143 (providing a number of rationales which are consistent with the proper “functional approach” to the determination of obviousness as laid down in Graham).

In regard to claim 1, this claim has been amended to recite:

“A splint for a joint between two members of a human or animal body, for example such as the ankle, knee or elbow, composed of at least one rigid and globally concave shell (1, 2) that can be positioned around the joint, resting on the said joint, comprising a chamber (3, 4) made of a flexible plastic material that can be pressurised by any appropriate means, on its inner face, in other words on its concave face, this chamber being placed on the inner face of the shell (1, 2) to supply a supporting cushion between the said shell (1, 2) and the joint, and it covers at least a part of the inner face of the shell (1, 2), the said splint comprising means (6) of holding the said shell (1, 2) in position around the joint, characterised in that the shell (1, 2) is composed of a single element comprising a rigid part and at least one flexible area (7, 8; 12, 13) to avoid any injury to the oedematous tissue that developed subsequent to a severe or minor sprain of the joint, wherein the flexible area is made from a styrene ethylene butylene styrene (SEBS) block copolymer mixed with a rigid synthetic material from which the rigid part is made so that the shell is made from a single mould wherein the flexible area is chemically bonded to the rigid part of the shell (1, 2).”

These amendments are supported, for example, by original claim 6 which has been cancelled and page 5, lines 12-14 of the Specification. These amendments to claim 1 aim to clarify that the splint of claim 1 is made as a single element, (i.e. from a single mould) as is apparent from page 5, lines 12-14 of the Specification.

Specifically, claim 1 has been amended to specify how the chemical bonding is performed. More precisely, the flexible area is made from a styrene ethylene butylene styrene (SEBS) block copolymer mixed with a rigid synthetic material from which the rigid part is made. See Specification, Page 8, Lines 8-13. Use of these mixed materials enables the shell to be formed as a single element (i.e., made from a single mould), wherein the flexible area is chemically bonded to the rigid part. See Specification, Page 5, Lines 12-14. The Applicants submit that amended claim 1 is not disclosed by Grim.

The splint disclosed in Grim comprises a flexible area and a rigid part, which are bonded together so as to form a shell. Specifically, Grim discloses a splint having a rigid shell (18; 20) to which a flexible material is bonded to form a flexible padded material (95). Consequently, the flexible portion is a distinct element that is bonded to the rigid support member of the shell, by use of an adhesive or by thermal bonding. See Grim, Column 5, Lines 60-66. However, Grim does not teach or suggest chemical bonding so as to form a shell as a single element as recited in amended claim 1.

Having a shell composed of a single element is very advantageous. Indeed, as the shell is made of a single part and from a single mould, the flexible part of the shell does not tear off unlike devices disclosed by Grim. See Specification, Page 5, Lines 12-14. In Grim, a flexible portion of the splint is a separate element bonded to the rigid shell and is thus likely to tear off. However, by chemically bonding these elements to form a single part, the splint of claim 1 avoids this problem. Therefore, Grim fails to teach or suggest a shell composed of a single element as recited in amended claim 1.

Additionally, the shell of claim 1 further improves the comfort for a user that is wearing the splint barefoot. See Specification, Page 5, lines 10-11. Specifically, the use of styrene ethylene butylene styrene (SEBS) improves the comfort level enjoyed by a user. Thus, the use of SEBS over other possible materials is not a design choice as argued by the Examiner but instead provides functional utility. However, Grim does not teach or suggest forming the shell from SEBS as recited in amended claim 1;

Based on the arguments presented above, Grim fails to teach or suggest each element of amended claim 1. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1 on this basis.

In regard to claims 2-5 and 7-23, these claims depend from independent claim 1 and incorporate the limitations thereof. The Examiner's argument assumes that Grim discloses all elements of claim 1 which are incorporated in dependent claims 2-5 and 7-23. However, as discussed above, Grim does not disclose all the limitations of claim 1. Therefore, claims 2-5 and 7-23 are not obvious in view of Grim. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejections of claims 2-5 and 7-23 on this basis.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 10 July 2009

By: 
Farzad E. Amini, Reg. No. 42,261

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
Telephone (408) 720-8300
Facsimile (408) 720-8383

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on the date below.


Jessica M. Huester

7/12/09
Date